UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

In re:		hapter 13
STEPHANIE HENRY,	e	ase No. 13-30519 (DRJ)
Debtor.	8 8	
	§ —	
STEPHANIE HENRY, on behalf of herself	§	
and all others similarly situated,	§ §	
Plaintiffs,		dv. Pro. No. 18-03154 (DRJ)
V.	§ §	
EDUCATIONAL FINANCIAL SERVICES,		UTATIVE NATIONWIDE
A DIVISION OF WELLS FARGO BANK,	§ <u>C</u>	LASS ACTION
N.A,	§	
Defendant.	§ §	

PLAINTIFF'S STATEMENT OF ISSUES AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

(RELATES TO DKT. NOS. 43, 44)

Plaintiff Stephanie Henry ("Henry"), on behalf of herself and all those similarly situated, through undersigned counsel pursuant to Federal Rule of Bankruptcy Procedure 8009 and Federal Rule of Appellate Procedure 6, provide the following statement of issue and designation of items to be included in the record on appeal. *See* Dkt. Nos. 43, 44.

¹ Plaintiff appears both individually and on behalf of all similarly situated individuals who have filed for bankruptcy in the various district courts of the United States and were issued discharge orders since October 17, 2005, who: (1) before filing for bankruptcy, obtained private Consumer Education Loans from Defendant or its predecessors in interest that were not made under any program funded by a non-profit institution to cover expenses at ineligible institutions as that term is defined in 11 U.S.C. § 523(a)(8)(B) and 26 U.S.C. § 221(d); (2) have never reaffirmed any pre-petition private Consumer Education Loan; and (3) have nonetheless been subjected to Defendant's policy of attempting to induce payment and/or Defendant's successful inducement of payment on these discharged Consumer Education Loans ("Class Members").

I. STATEMENT OF ISSUE ON APPEAL

Plaintiff intends to present the following issue on appeal:

1. Whether the bankruptcy court permissibly exercised its discretion to deny the motion to stay and compel arbitration filed by Defendant Educational Financial Services, A Division of Wells Fargo Bank, N.A., consistent with this Circuit's ruling in *Matter of National Gypsum Co.*, 118 F.3d 1056 (5th Cir. 1997) and the Second Circuit's ruling in *In re Anderson*, 884 F.3d 382 (2d Cir. 2018), *cert. denied sub nom. Credit One Bank, N.A. v. Anderson*, No. 17-1652, 2018 WL 2876199 (U.S. Oct. 1, 2018).

II. DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Plaintiff designates the following additional highlighted items (including, without limitation, any and all exhibits, attachments, appendices, and other similar additions to such items) to be included in the record on appeal:

Filing Date	Case Number	Docket #	<u>Docket/Claim Register Text</u>	
Bankruptcy Case No. 13-30519				
02/01/2013	13-30519	1	Chapter 13 Voluntary Petition. Fee Amount \$281. Filed by Stephanie Marie Henry. (Kemsley, Rod) (Entered: 02/01/2013)	
02/04/2013	13-30519	11	Schedule A, Schedule B, Schedule C, Schedule D, Schedule E, Schedule F, Schedule G, Schedule H, Schedule I, Schedule J, Statement of Financial Affairs (Filed By Stephanie Marie Henry). (Kemsley, Rod) (Entered: 02/04/2013)	
05/17/2018	13-30519	168	Order Discharging Debtor Signed on 5/17/2018 (Related document(s):164 Chapter 13 Debtor's Certification and Motion for Discharge) (hcar) (Entered: 05/17/2018)	
02/13/2013	13-30519	Claim 2-	Claim #2 filed by Wells Fargo Bank NA, Amount claimed: \$10063.29 (Radic, Irena)	
Adversary Case No. 18-03154				
06/12/2018	18-03154	1	Adversary case 18-03154. Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)),(72 (Injunctive relief - other)), (91 (Declaratory judgment)) Complaint by Stephanie Marie Henry	

			against Educational Financial Service, A Division of Wells Fargo Bank, N.A Fee Amount \$350 (Corral, Adam) (Entered: 06/12/2018)
06/19/2018	18-03154	4	Request for Issuance of Summons on Educational Financial Services, A Division of Wells Fargo Bank, N.A (Corral, Adam) (Entered: 06/19/2018)
06/20/2018	18-03154	5	Summons Issued on Educational Financial Service, A Division of Wells Fargo Bank, N.A. Date Issued 6/20/2018. (kpico) (Entered: 06/20/2018)
06/20/2018	18-03154	6	Summons Service Executed on Stephanie Marie Henry 6/20/2018. (Corral, Adam) (Entered: 06/20/2018)
07/12/2018	18-03154	7	Motion to Extend Time / Deadline to Respond to Plaintiff's Complaint Filed by Educational Financial Service, A Division of Wells Fargo Bank, N.A. (Attachments: # 1 Proposed Order) (Knapp, Bradley) (Entered: 07/12/2018)
07/25/2018	18-03154	8	Order Granting Motion to Extend Time (Related Doc # 7) Signed on 7/25/2018. (aalo) (Entered: 07/25/2018)
08/10/2018	18-03154	10	Motion To Stay., in addition to Motion to Compel <i>Arbitration</i> , or in the alternative Motion to Dismiss Adversary Proceeding. Objections/Request for Hearing Due in 21 days. Filed by Educational Financial Service, A Division of Wells Fargo Bank, N.A. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order) (Knapp, Bradley) (Entered: 08/10/2018) (including exhibits 10-1 through 10-4 and Proposed Order at exhibit 10-5)
08/15/2018	18-03154	18	Notice of <i>Hearing</i> . (Related document(s):10 Motion To Stay, Motion to Compel, Motion to Dismiss Adversary Proceeding) Filed by Educational Financial Service, A Division of Wells Fargo Bank, N.A. (Knapp, Bradley) (Entered: 08/15/2018)
08/30/2018	18-03154	21	Response to Motion to Compel and Dismiss (related document(s):10 Motion To Stay, Motion to Compel, Motion to Dismiss Adversary Proceeding). Filed by Stephanie Marie Henry (Attachments: # 1 Proposed Order) (Corral, Adam) (Entered: 08/30/2018) (including Proposed Order at exhibit 21-1)

09/04/2018	18-03154	22	Witness List, Exhibit List (Filed By Educational Financial Service, A Division of Wells Fargo Bank, N.A.).(Related document(s):18 Notice) (Knapp, Bradley) (Entered: 09/04/2018)
09/04/2018	18-03154	23	Exhibit List (Filed By Stephanie Marie Henry). (Corral, Adam) (Entered: 09/04/2018)
09/04/2018	18-03154	24	Exhibit List (Filed By Stephanie Marie Henry). (Corral, Adam) (Entered: 09/04/2018)
10/01/2018	18-03154	40	Notice of Supplemental Authority. (Related document(s):21 Response, 32 Courtroom Minutes) Filed by Stephanie Marie Henry (Attachments: # 1 Exhibit A; Order List)(Corral, Adam) (Entered: 10/01/2018) (including exhibit 40-1)
10/17/2018	18-03154	41	Order Denying Motion to Compel Arbitration and Dismiss Complaint and Certification for Direct Appeal (Related Doc # 10) Signed on 10/17/2018. (VrianaPortillo) (Entered: 10/18/2018)
10/31/2018	18-03154	43	Notice of Appeal filed. (related document(s):41 Order on Motion To Stay, Order on Motion to Compel). Fee Amount \$298. Appellant Designation due by 11/14/2018. (Attachments: # 1 Exhibit A)(Knapp, Bradley) (Entered: 10/31/2018)
11/03/2018	18-03154	47	Transcript RE: Motion Hearing held on September 6, 2018 before Judge David R. Jones. Transcript is available for viewing in the Clerk's Office. Filed by Transcript access will be restricted through 02/1/2019. (mhen) (Entered: 11/03/2018)
11/14/2018	18-03154	53	Appellant Designation of Contents For Inclusion in Record On Appeal (related document(s):43 Notice of Appeal). (Knapp, Bradley) (Entered: 11/14/2018)

Dated: November 28, 2018.

Respectfully submitted,

/s/Jason W. Burge

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Counsel to Stephanie Henry

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of November, 2018, a true and correct copy of *Plaintiff's Statement of Issues and Designation of Items to be Included in the Record on Appeal* was served via that Court's electronic case filing system (CM/ECF) to all parties registered to receive such notice in the above-captioned proceeding.

/s/Jason W. Burge